

Comments Received on 8/3/06 Draft of Ch. NR 820

NR 820.10

I suggest we change "impacts from groundwater drawdown" to "impacts from groundwater pumpage" as there could be impacts to water quality or other parameters that are tied to pumpage and not necessarily drawdown. It would seem more effective to be regulating pumpage, not just drawdown. **(John Jansen)**

NR 820.11

NR 820.12

NR820.12(17) This definition of spring could include many lakes that have an outlet but no inlet. If this is not the intent of the rule, then some sort of limit on the size of the spring pond should be included. I would suggest limiting the pond to less than about 1 or 2 acres. **(John Jansen)**

NR820.12(18) I would like to see the size of the basin defined. If we are talking about the Lake Michigan Basin vs. the Mississippi basin, that should be specified. If smaller basins are used as the standard, then most municipal wells divert water. **(John Jansen)**

NR 820.12

Add "Significant Adverse Environmental Impact" - While this definition is open to input from ecologists and public comment, a definition that could serve as a placeholder might be as follows: "Significant Adverse Environmental Impact" means alteration of groundwater levels, groundwater discharge, surface water levels, surface water discharge, groundwater temperature, surface water temperature, groundwater chemistry, surface water chemistry, or other factors that cause significant degradation of environmental quality such as the health of aquatic flora and fauna. **(Jodi Habush Sinykin)**

"High Capacity Property" - In a situation where several low-cap wells are clustered together on separate properties—for example, a dense subdivision or a series of irrigation wells, the impact could be the same/greater than a single high-cap well but would fall outside definition. **(Jodi Habush Sinykin)**

"One Property" - For like reasons, this definition of property should be refined to eliminate any potential loophole provided to an owner of multiple properties or to related owners who are pooling the water for a particular project but remain unregulated because each owner has a low cap well. **(Jodi Habush Sinykin)**

NR 820.13

NR 820.20

NR 820.20, designation of groundwater management areas. How were these areas determined? Do parts of all the towns, villages and cities identified on this list have a drawdown of greater than 150 feet? Is there information to support that drawdown? I am sure that the communities on that list will want to know that information. **(Lawrie Kobza)**

Why is Milwaukee County part of the GMA? If it is strictly because of drawdown, maybe they should not be there. It would appear that Jefferson County should be there as recharge for the deep aquifer comes from Jefferson County. It just seems that Jefferson County would have more of an impact on the groundwater situation than Milwaukee, where groundwater use is limited. Why would Milwaukee County want to be part of decisions, or be subjected to the requirements, that do not affect them? **(Dan Duchniak)**

Section 820.20(1)(a). Items 6 & 7 should reference the appropriate "U.S. Public Land Survey Townships" which are areas including towns, villages and cities rather than "Towns" which are units of government and do not include cities and villages. As written, the Village of East Troy, for example, would be excluded. **(Bob Biebel)**

Section 820.20. Add (8) "The portions of any other counties contributing to or impacted by the 150 feet drawdown area." **(Jodi Habush Sinykin)**

As an additional comment regarding GMAs, given the shortcomings of the 150 feet potentiometric reduction threshold (e.g. areas with an unconfined aquifer like Dane County), the GMA definition that has been developed by members of the GWAC's scientific advisory committee, can be noted here for purposes of bookmarking the 150 feet threshold for legislative change:

"A Groundwater Management Area means an area where the withdrawal of groundwater over the long term adversely affects the availability of water for use or adversely affects water quality due to the effects of drawdown OR where there is a need for a coordinated response among the state, local governmental units, regional planning commissions, and public and private users of groundwater." **(Jodi Habush Sinykin)**

NR 820.21

I am surprised by the administrative requirements for the groundwater management plan. While I support the preparation of a plan, I thought the Advisory Committee was supposed to make recommendations to the legislature first, and the DNR could only proceed with regulations on groundwater management on its own if no recommendations were made by 1/1/2007? **(Lawrie Kobza)**

I don't believe there is a regional planning body which covers the area proposed to be the Northeast Wisconsin Groundwater Management Area. What happens then? How is the regional planning body designated under the proposal? **(Lawrie Kobza)**

I expect it may be difficult for the Northeast Wisconsin Groundwater Management Area to get together, select a regional planning body, arrange for methods of cost sharing, and prepare a plan within 18 months. What is the enforcement mechanism here? I think the area being designated is much bigger than what anyone thought would be designated. **(Lawrie Kobza)**

I don't think it is possible to develop a groundwater management plan with any sort of public support in 18 months. If this applies to new GMAs, it may take them 18 months to organize and fund a plan. SEWRPC's effort will be more like 3 to 5 years from initial conceptualization to completion. **(John Jansen)**

NR 820.21(3) says that all local units of government situated within a groundwater management area shall comply with the groundwater management plan developed for the groundwater management area? What about other users in the area? They should have to comply with the plan too. Under Wisconsin law, the State is deemed to have preempted local regulation of groundwater. Therefore local governments cannot pass local ordinances regulating who can put in a well and under what conditions. Because of this, property owners can simply opt out of the groundwater management plan by putting in a private well. **(Lawrie Kobza)**

This makes the plan mandatory for all local governmental bodies. Given that not all units of government will face the same burden from a plan, it will be very hard to get consensus. How do you propose to compel reluctant bodies to comply? The net result may be to water down the plan to come up with goals that the least interested party will agree with. You may be able to accomplish more by having higher

goals with more flexibility on compliance. To echo Lawrie's point, its important that the plan applies to private parties as well as local governments. **(John Jansen)**

The regional bodies authorized to develop a plan have not been created yet and what are the components and elements of a plan? How do you determine if a plan is acceptable? In SE Wisconsin there is SEWRPC, however, they represent more than the affected areas. Again, why would areas outside the GMA want to, or need to, be involved in decisions that do not impact them or be subjected to these requirements. This will be very difficult to achieve from a political standpoint and that needs to be a consideration. There should be some sort of mandate that the GMA's need to set up a regional body by a certain date. And what happens if they don't set up a regional body are there consequences? My fear would be that the first entity through that wanted a well would need to take the lead on setting up the regional entity and then creating the plan. This is again impractical. **(Dan Duchniak)**

Dan Duchniak's comments relating to concerns about regional bodies carrying out planning for the GMA's needs some clarification. The text of the proposed rule on this issue was reasonably well done as drafted. In Southeastern Wisconsin, the GMA very nearly matches the SEWRPC planning area. However, that is not critical as regional planning agencies often carry out planning for sub regional areas or areas larger than their identified planning areas. SEWRPC is currently preparing a regional water quality management planning program for a watershed based area including portions of three counties outside of the SEWRPC region. There has been good cooperation from within the three out of region counties in this regard. There seems to be confusion in Dan's comments that only the units of government with severe problems should be involved in the planning area. However, the units of government who may be part of the solution (but do not have a groundwater problem) such as Milwaukee County should also be involved in the planning. Thus there may well be cases where the study area for a GMA planning program should extend beyond the boundaries of the GMA if the GMA is defined by a groundwater problem such as a groundwater aquifer drawdown. **(Bob Biebel)**

What are the consequences of not achieving the goals specified by the plan? If the consequences are severe, the goals will be set too low. If there are no consequences, the goals may have no meaning. This should be defined so the goals set are reasonable yet effective. **(John Jansen)**

Section 820.21(2). The designation and authorization of the regional planning body requirements should be clarified to indicate the authorizing entity. **(Bob Biebel)**

Section 820.21(3). The compliance with the GMA plan is a sound concept. However, the basis for compliance requirements should be expanded to provide links between both WDNR permitting and PSC approvals to consistency with the plan. **(Bob Biebel)**

Section 820.21. The issue of funding for plan preparation and implementation monitoring is not covered. There is an ongoing commitment on the part of the regional planning body cited in Section 820.21(5) that will have to be funded. **(Bob Biebel)**

Section 820.21. There should be a component requiring approval of the plan by a State agency in order to sanction it. The WDNR Board would be an obvious choice. **(Bob Biebel)**

Section 820.21_As noted by other Committee members, the lack of guidance and criteria provided in this section of the draft rules will likely result in the creation of ineffective, sub-par groundwater management plans in the GMAs. As provided under the Groundwater Advisory Committee's statutory charge, the Committee is responsible for recommending a coordinated strategy for addressing groundwater management issues by affected local governmental units and regional planning commissions. As the DNR is aware, the Committee, working together with the Science Advisory Group, has developed a draft

groundwater management plan for Groundwater Management Areas. As such, it only makes sense that 820.21 integrate the work product of the GWAC relating to its GMA groundwater management plan. NR 820.21, for example, could require that the GWAC management model be the standard to **meet or exceed** by the designated regional planning bodies. **(Jodi Habush Sinykin)**

In the alternative, in order to provide the requisite guidance and criteria, NR 820.21 should be significantly expanded to include the provisions and criteria set forth in the working GMA Plan of the GWAC, which encompass:

1. Designation of GMAs
2. Designation of GMA planning agencies
3. GMA planning process
4. Content of GMA Plans***

- (a) planning area boundaries
- (b) Inventory and Forecasts
- (c) Water users
- (d) Water sources
- (e) Existing studies
- (f) Groundwater assessment
- (g) Groundwater model
- (h) Groundwater goals
- (i) BMPs

(see draft plan for complete itemization)

5. Procedures for approval of GMA plans
6. Implementation **(Jodi Habush Sinykin)**

NR 820.22

This section says that the DNR will not approve a high capacity well that is not consistent with a groundwater management plan. This may be attempting to get at the concern raised in Comment No. 5. However, does the DNR have the authority to do this given Wis. Stat., sec. 281.34 discusses high capacity well approvals and nothing like this is included in the statute. I think it would help to have a DNR legal opinion on this. **(Lawrie Kobza)**

We should consider changing shall to may to allow some flexibility. **(Dan Duchniak)**

Wells smaller than high capacity wells should also have to comply with a groundwater management plan. A subdivision with many private wells can have a significant impact on groundwater. Excluding these wells would encourage subdivisions with many private wells, instead of a few community wells. **(Lawrie Kobza)**

This will have the effect of grandfathering existing users, potentially at the expense of new and more important needs. **(John Jansen)**

NR 820.30

NR 820.30. This section of the rules is not consistent with either the statute or the underlying legislative intent to allow no significant environmental impact in a GPA. It is inappropriate for the DNR to attempt to use the public rights stage as a surrogate for “no significant environmental impact” in a Groundwater Protection Area. Practically speaking, there could still be a significant environmental impact even after the public rights stage has been set and the Department has reviewed the information requested for approval of a high capacity well (i.e. 820.20 (1)(a) – (e)). As such, while setting the public rights stage could provide useful information, the only sure way to meet the statutory intent to ensure “no significant environmental impact” is to require an environmental review for each high cap well application in a GPA. **(Jodi Habush Sinykin)**

NR820.30(2) This will be hard to do in a meaningful way without some aquifer properties. In the absence of field data, this will have to use assumed values which will be subject to dispute. **(John Jansen)**

NR820.30(4d and 4e) This seems to create a new class of well permit. Will this require any changes to other well codes? **(John Jansen)**

NR 820.31

NR820.31 Same comments as for NR820.30(2) and NR820.30(4d and 4e) **(John Jansen)**

NR 820.31 For like reasons, an environmental assessment should be required on all applications of high-capacity wells near springs. **(Jodi Habush Sinykin)**

NR 820.32

Why 95%? Are we saying that 90% is ok? Any deep aquifer well installed in SE Wisconsin will have 100% water loss due to the transfer of water from the deep aquifer to the surface waters. That is water that would have flowed towards the Great Lakes and would now be intercepted and discharged outside of the basin to the Mississippi. Therefore any deep wells in this area would have to meet all the requirements set forth in this section. Again, this is impractical and will have serious political implications that are not being considered. **(Dan Duchniak)**

NR 820.33

General

Finally, the draft rule does not discuss opportunities for dispute resolution or input from third parties. These are bound to be big issues, so I would like to see the rule spell out the procedures and limits. **(John Jansen)**

In disregard of 281.24 (8)(d), the rules do not establish a program designed to mitigate the effects of wells constructed in GPAs prior to the statute’s enactment, such as abandonment or replacement of existing wells or other management strategies. **(Jodi Habush Sinykin)**